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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/661,964

09/12/2003

Eldon L. Decker

1886A1

8568

7590

02/21/2007

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EXAMINER

AHMED, SHEEBA

ART UNIT

PAPER NUMBER

1773

SHORTENED STATUTORY PERIOD OF RESPONSE	MAIL DATE	DELIVERY MODE
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3 MONTHS

02/21/2007

PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

If NO period for reply is specified above, the maximum statutory period will apply and will expire 6 MONTHS from the mailing date of this communication.

## Office Action Summary

**Application No.**

10/661,964

**Applicant(s)**

DECKER ET AL.

**Examiner**

Sheeba Ahmed

**Art Unit**

1773

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 09 November 2006.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 15-37 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 15-37 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)                                | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                       | 5) <input type="checkbox"/> Notice of Informal Patent Application                       |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)<br>Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____  |

## **DETAILED ACTION**

### ***Continued Examination Under 37 CFR 1.114***

1. A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on November 9, 2006 has been entered.

### ***Response to Amendments***

2. Amendments to claims 15, 18, 25, 28, 30, 31, and 35 have been entered in the above-identified application. **Claims 15-37 are pending.**

The indicated allowability of claim 37 is withdrawn in view of the newly applied rejection. Any inconvenience to the Applicants is regretted.

### ***Claim Rejections - 35 USC § 112***

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

3. Claims 15-37 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

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Claims 19, 28, and 31 recite a Markush group of pigments however it is unclear what are salt type (lakes) and condensation pigments? Further, the Examiner recommends listing the polycyclic pigments recited in parentheses as part of the Markush listing otherwise it is unclear whether the pigments listed in parentheses are part of the Markush group or not.

Claims 15, 16, 25, 29, 30, and 33-37 recite weight percentages of various components but do not state what the wt. %'s are based upon.

Claim 26 depends on claim 15 and recites that "said colorants are present in a first layer and said reflective pigments are present in a second layer underlying said first layer". Does each layer comprises a resinous binder? Claim 26 is ambiguous.

Clarification is required.

### ***Claim Rejections - 35 USC § 102***

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

4. Claims 15-17 and 21-25 are rejected under 35 U.S.C. 102(b) as being anticipated by O'Brill (US 4,172,063).

O'Brill discloses an abrasion resistant reflective exterior marking composition for application to various kinds of substrates (Column 1, lines 43-56). The composition includes fluorescent pigments which produce a glowing effect at night when illuminated

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with a black light. Similarly, the composition is highly reflective during daytime (Column 2, lines 12-45). The composition includes an organic thermoplastic, resinous material. A glass fiber component and a fluorescent pigment. Example 1 shows that the composition comprises 5% by weight of fluorescent pigment. All limitations of claims 15-17 and 21-25 are disclosed in the above reference.

5. Claims 15-17, 21-23, and 25-27 are rejected under 35 U.S.C. 102(b) as being anticipated by Fasano (US 5,135,568).

Fasano discloses the use of hollow polymer particles in fluorescent coatings. The hollow particle may be employed as an additive in a fluorescent coating, as an additive in a basecoat onto which a fluorescent coating is applied or as an additive in both (Column 2, lines 8-17). The use of these particles permits a greater flux of UV light and shorter wavelength visible light in a coating and improve the fluorescence of the coating (Column 2, lines 33-48). The fluorescent additive may be pigment or a dye and examples include the list on the bottom of Column 2. The amount of the hollow particles may be 1 to 90% by weight (Column 3, lines 5-10). All limitations of claims 15-17, 21-23, and 25-27 are disclosed in the above reference.

### ***Response to Arguments***

6. The rejection of claims 15-19, 21-31, and 33-36 under 35 U.S.C. 112, first paragraph because the specification, while being enabling for a coating composition comprising a resinous binder having dispersed therein colorants and reflective pigments

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wherein the pigments have a particle size of less than about less 150 nm and the coating composition exhibits a first appearance on face dominated by absorbance of light by the colorants and a second appearance on flop dominated by fluorescence of the colorants, does not reasonably provide enablement for a coating composition wherein the reflective pigments have a particle size greater than 150 nm and still exhibits a first appearance on face dominated by absorbance of light by the colorants and a second appearance on flop dominated by fluorescence of the colorants and the rejection of claims 15-27 and 31-35 under 35 U.S.C. 112, first paragraph, as failing to comply with the written description requirement have been withdrawn in light of the amendments made to claims 15, 18, 25, 28, 30, 31, and 35 and the arguments presented in the Reply of November 9, 2006.

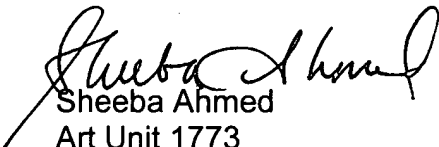
### ***Conclusion***

7. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Sheeba Ahmed whose telephone number is (571)272-1504. The examiner can normally be reached on Monday-Friday from 6am to 2pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Carol Chaney can be reached on (571)272-1284. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300. Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status

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information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.



Sheeba Ahmed  
Art Unit 1773  
January 7, 2007